

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

RAYMOND GILLEN,)	3:05-CV-0356-RAM
)	
Plaintiff,)	<u>ORDER</u>
)	
vs.)	
)	
TED D'AMICO, et al.,)	
)	
Defendants.)	
)	

Before the court is Defendants Motion for Summary Judgment (Doc. #29) filed on August 15, 2005, on the behalf of Defendants Ted D'Amico, and Drs. Karen Gedney and Marsha Johns. Plaintiff submitted an opposition (Doc. #34), to which Defendants replied (Doc. #44). Plaintiff also submitted a sur-reply (Doc. #45), and Defendants move to strike that brief (Doc. #46).

It has come to the court's attention that Plaintiff has not yet received notice of the requirements of *Klinge v. Eikenberry*, 849 F.2d 409 (9th Cir. 1988) and *Rand v. Rowland*, 154 F.3d 952 (9th Cir. 1998). To that extent, Plaintiff should be aware that Defendants have filed a motion to dismiss, motion for summary judgment on the pleadings, or a motion for summary judgment. These are known as "dispositive motions," for they may terminate either some portion or all of this lawsuit, if granted. This notice is given to all parties to this litigation, and particularly to the party against whom the above referenced motion has been filed.

Pursuant to the last sentence in Federal Rules of Civil Procedure 12(b), if evidence is submitted with a motion to dismiss and considered by the court, then the motion will be treated as a motion for summary judgment. The same is true regarding a motion for judgment on the pleadings. See Fed. R. Civ. P. 12(c). **This notice is issued, in part, to alert the plaintiff that if defendants have submitted**

evidence in support of a motion to dismiss or a motion for judgment on the pleadings, then the court may treat the pending motion as a motion for summary judgment. If the court grants summary judgment, then judgment may be entered against plaintiff and this lawsuit will end without trial. This notice contains important information about what you need to do to oppose the motion. Please read it carefully.

Motion to Dismiss—Fed. R. Civ. P. 12(b)(6)

If the party or parties which filed the motion (hereinafter the “moving party”) have filed a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6), the party or parties against whom that motion is filed (hereinafter the “non-moving party”) must file points and authorities in opposition to that motion within fifteen (15) days after service of that motion. Local Rule 7-2(b). The failure to file points and authorities in response to any motion shall constitute a consent to the granting of the motion. Local Rule 7-2(d). The court may then grant the motion and dismiss the non-moving party’s claims. If the non-moving party does not agree that its claims should be dismissed, it must file and serve points and authorities in opposition within fifteen (15) days from the date the moving party served the non-moving party with the motion.

Motion for Judgment on the Pleadings—Fed. R. Civ. P. 12(c)

If the moving party has filed a motion for judgment on the pleadings pursuant to Fed. R. Civ. P. 12(c), the non-moving party must file points and authorities in opposition to that motion for judgment within fifteen (15) days after service of the motion. Local Rule 7-2(b). The failure to file points and authorities in response to any motion shall constitute a consent to the granting of the motion. Local Rule 7-2(d). The court may then grant the motion and dismiss the non-moving party’s claims. If the non-moving party does not agree that its claims should be dismissed, the non-moving party must file and serve points and authorities in opposition within fifteen (15) days from the date the moving party served the non-moving party with the motion.

Motion for Summary Judgment—Fed. R. Civ. P. 56

_____ If the moving party has filed a motion to dismiss under Fed. R. Civ. P. 12(b)(6) or a motion for judgment on the pleadings under Fed. R. Civ. P. 12(c) and attached admissible evidence to the

1 motion, or if it has filed a motion for summary judgment under Fed. R. Civ. P. 56, then the non-
2 moving party must properly oppose the motion by filing opposing points and authorities, admissible
3 evidence, and a statement of facts under Local Rule 56-1, within fifteen (15) days after service of the
4 motion. See Fed. R. Civ. P. 56, Local Rules 7-2(b) and 56-1. The standards governing motions for
5 summary judgment are stated in Rule 56 of the Federal Rules of Civil Procedure. All parties should
6 read that rule and be familiar with it.

7 The Ninth Circuit Court of Appeals has directed that the following notice be given to you:

8 A motion for summary judgment is a means through which the
9 defendants seek to have your case dismissed. A motion for summary
10 judgment under Rule 56 of the Federal Rules of Civil Procedure will, if
11 granted, end your case.

12 Federal Rule of Civil Procedure 56 tells you what you must do
13 in order to oppose a motion for summary judgment. Generally,
14 summary judgment must be granted when there is no genuine issue of
15 material fact—that is, if there is no real dispute about any fact that
16 would affect the result of your case, the party who asked for summary
17 judgment is entitled to judgment as a matter of law, which will end your
18 case. When a party you are suing makes a motion for summary
19 judgment that is properly supported by declarations (or other sworn
20 testimony), you cannot simply rely on what your complaint says.
21 Instead, you must set out specific facts in the form of admissible
22 evidence (such as affidavits, declarations, depositions, answers to
23 interrogatories, or properly authenticated documents as provided in
24 Rule 56(e)), that contradict the facts shown in the defendant's
25 declarations and documents and show that there is a genuine issue of
26 material fact for trial. If you do not submit your own evidence in
27 opposition, summary judgment, if appropriate, may be entered against
28 you. If summary judgment is granted, your case will be dismissed and
there will be no trial.

Rule 56-1 of the Local Rules for the United States District
Court for the District of Nevada also requires, in addition, that you file
with your opposition to a motion for a summary judgment a statement
of facts which you contend are or are not genuinely in issue in this
summary judgment procedure. If you are opposing a summary judgment
motion, you should review the opposing party's Local Rule 56-1
statement of facts not genuinely in issue, and you should set forth in
writing those facts (supported by specific citation to evidence in the
record which you have attached to your motion or statement) which
contradict the claims of the opposing party. In other words, you must
provide the court a statement of facts supported by attached admissible
evidence that demonstrates that the opposing party is not entitled to
judgment against you.

1 If you are the party moving for summary judgment, you should
2 set forth, in writing, a statement of material facts, not genuinely in issue
3 (supported by specific citation to evidence in the record which you have
4 attached to your motion or statement) which supports your claim for
5 summary judgment. In so doing, you must show the court those
6 material facts which can be proven with admissible evidence that
7 demonstrate that you are entitled to have judgment entered in your
8 favor at this time.

9 If the non-moving party fails to oppose the motion within fifteen
10 (15) days, or if the non-moving party fails to submit evidence
11 supporting its motion, and if the motion for summary judgment has
12 merit, that failure to file points and authorities in response to any
13 motion shall constitute a consent to the granting of the motion. Local
14 Rule 7-2(d). The court may then grant the motion and enter
15 judgment. Local Rule 7-2(d).

16 **IT IS THEREFORE ORDERED** that Plaintiff, as the non-moving party, shall have fifteen
17 (15) days from the date of this Minute Order within which to file and serve points and authorities (and
18 any other required documents) to supplement his Opposition (Doc. #34) to the pending dispositive
19 motion for summary judgment (Doc. #29) pursuant to the instructions herein.

20 **IT IS FURTHER ORDERED** that Defendants, as the moving party, shall thereafter have
21 eleven (11) days after filing of the supplement to Plaintiff's Opposition, to file and serve a reply points
22 and authorities (and any other required documents) to that supplement. The pending motion(s) shall
23 then be submitted to the court for decision.

24 DATED: January 3, 2006.



25 UNITED STATES MAGISTRATE JUDGE